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PUBLIC SAFETY AND HOMELAND SECURITY BUREAU APPROVES REGION 8 (NEW YORK METROPOLITAN AREA) 700 MHZ REGIONAL PLAN

PS Docket No. 06-229; WT Docket No. 02-378

Introduction. On April 24, 2008, the Region 8 (New York Metropolitan Area)¹ 700 MHz Regional Planning Committee (RPC) (Region 8) submitted a proposed 700 MHz Public Safety Plan (Plan) for General Use² spectrum in the 769-775/799-805 MHz band.³ On November 5, 2008, Region 8 submitted a Plan Addendum to provide updated evidence of coordination with its adjacent regions, Region 19 (New England), Region 28 (Delaware, Eastern Pennsylvania and Southern New Jersey) and Region 30 (New York-Albany).⁴ For the reasons discussed below, we approve the Region 8 700 MHz Plan.

Background. In 1998, the Federal Communications Commission (Commission) established a structure to allow RPCs optimal flexibility to meet state and local needs, encourage innovative use of the spectrum, and accommodate new and as yet unanticipated developments in technology and equipment.⁵ There are fifty-five RPCs, and each committee is required to submit its plan for the General Use spectrum.⁶ The Commission's role in relation to the RPCs is limited to (1) defining the regional boundaries; (2) requiring fair and open procedures, *i.e.*, requiring notice, opportunity for comment, and

¹ The Region 8 (New York Metropolitan Area) 700 MHz regional planning area includes the New York counties of Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester Counties; and the New Jersey counties of Bergen, Essex, Hudson, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Passaic, Somerset, Sussex, Union and Warrenton.

² The General Use spectrum is administered by RPCs and is licensed for public safety services on a site-by-site basis in accordance with the relevant Commission-approved regional plan and frequency coordination.

³ See Letter from William Gardner, Chairman, Region 8 700 MHz Regional Planning Committee to Office of the Secretary, Federal Communications Commission, WT Docket No. 02-378, PS Docket 06-226 (filed Apr. 24, 2008) (submitting 700 MHz regional plan).

⁴ See Letter from William Gardner, Chairman, Region 8 700 MHz Regional Planning Committee to Office of the Secretary, Federal Communications Commission, WT Docket No. 02-378, PS Docket No. 06-229 (filed Nov. 5, 2008) (submitting Plan Addendum to provide evidence of adjacent region coordination).

⁵ See Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010, WT Docket No. 96-86, *First Report and Order and Third Notice of Proposed Rulemaking*, 14 FCC Rcd 152 (1998) (*First Report and Order*); *Second Memorandum Opinion and Order*, 15 FCC Rcd 16844 (2000). See also 47 C.F.R. § 90.527.

⁶ See 47 C.F.R. § 90.527. Each RPC must incorporate certain common elements into its 700 MHz plan. A list of 700 MHz RPCs and region activities is available at <http://www.fcc.gov/pshs/public-safety-spectrum/700-MHz>.

reasonable consideration; (3) specifying the elements that all regional plans must include; and (4) reviewing and accepting proposed plans (or amendments to approved plans), or rejecting them with an explanation.⁷

On July 31, 2007, the Commission adopted a *Second Report and Order* revising the rules governing wireless licenses in the 700 MHz band.⁸ The Commission adopted a plan for the 700 MHz band to establish a nationwide, interoperable public safety broadband communications network for the benefit of state and local public safety users. The Commission designated the lower half of the 700 MHz public safety band for broadband communications (763-768/793-798 MHz) and consolidated existing narrowband allocations in the upper half of the public safety 700 MHz band (769-775/799-805 MHz).

Plan Requirements. Each committee is required to submit its plan for the assignment of licenses for General Use spectrum.⁹ Each regional plan must contain certain elements¹⁰ and must be coordinated with adjacent regions.¹¹ RPCs are expected to ensure that their committees are representative of all public safety entities in their regions by providing adequate notice of all meetings, opportunity for comment, and reasonable consideration of views expressed. Plans must include an explanation of how all eligible entities within the region were given such notice.¹² Plans should list the steps undertaken to encourage and accommodate all eligible entities to participate in the planning process, such as holding meetings in various parts of the region. In addition, a regional plan should describe outreach efforts made to tribal governments.¹³

Regional plans may differ in approaches to spectrum planning and management. In particular, some plans may make specific assignments to eligible public safety entities, while others may establish an allotment pool approach based on political boundaries such as counties.¹⁴ However, all 700 MHz plans submitted for review and approval must sufficiently address each of the common elements in the

⁷ *First Report and Order*, 14 FCC Rcd at 195 ¶ 87.

⁸ Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band; Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, PS Docket No. 06-229, WT Docket No. 96-86, *Second Report and Order*, 22 FCC Rcd 15289 (2007) (*Second Report and Order*).

⁹ See 47 C.F.R. §§ 90.527, 90.531. The 700 MHz public safety band plan contains 24 MHz of spectrum for public safety services at 763-775 MHz and 793-805 MHz, and the narrowband allocation is divided into several segments by designated purpose: General Use, Interoperability, Secondary Trunking, State License, Low Power and Reserve channels.

¹⁰ See 47 C.F.R. § 90.527; see also *First Report and Order*, 14 FCC Rcd at 193-94 ¶ 84.

¹¹ See 47 C.F.R. § 90.527; see also *First Report and Order*, 14 FCC Rcd at 190-96 ¶¶ 77-89.

¹² See *First Report and Order*, 14 FCC Rcd at 193-94 ¶ 84. The Commission directed RPCs to promptly adopt operating procedures that “ensure that all entities will be given reasonable notice of all committee meetings and deliberations.” *Id.* at 195 ¶ 86.

¹³ *Id.* at 193-94 ¶ 84.

¹⁴ See Plan, Appendix I – 700 MHz Channel Pool as Defined in CAPRAD at 117-123. The Computer Aided Pre-Allocation Resource and Database (CAPRAD) system is a spectrum management tool provided by the National Institute of Justice, National Law Enforcement and Corrections Technology Center. The CAPRAD system is available at <http://caprad.nlectc.du.edu>.

Commission's regional plan requirements.¹⁵ RPCs also are encouraged to consider utilizing the guidelines developed by the Public Safety National Coordination Committee (NCC).¹⁶

Review of the Region 8 700 MHz Plan. Region 8 convened its first meeting on January 23, 2002,¹⁷ wherein it elected its chairman and vice-chairman. The Plan includes By-laws,¹⁸ a detailed membership list,¹⁹ an outreach notification process,²⁰ and meeting announcements and meeting minutes.²¹ The Region 8 Chair has certified that all planning meetings were open to the public, pursuant to 47 C.F.R. § 90.531(a)(8).²²

The Plan describes the procedures for requesting spectrum allotments²³ and details its application procedures.²⁴ In addition, the Plan reviews the interference protection criteria, system design deployment constraints,²⁵ provides low power interoperability channel usage guidelines,²⁶ and addresses the continued use of the CAPRAD system and frequency coordination.²⁷ The Region 8 Plan pre-allocates the consolidated narrowband General Use spectrum by county.²⁸ The Plan was coordinated with all three

¹⁵ See 47 C.F.R. § 90.527.

¹⁶ The NCC was a federal advisory committee established by the Commission in 1999 to address and advise the Commission on operational and technical parameters for use of the 700 MHz public safety band. In addition, the NCC was tasked with providing voluntary assistance in the development of coordinated regional plans, and developed a *Regional Planning Guidebook*. Following the sunset of the NCC's charter on July 25, 2003, the National Public Safety Telecommunications Council (NPSTC) agreed to continue to provide assistance to regional planners. A copy of the 700 MHz Regional Planning Guidebook is available at the NPSTC website at <http://www.npstc.org/nccsubcom.jsp>.

¹⁷ See Plan, Section 1.1 First Convening Meeting at 2; see also Plan, Appendix V, RPC Meeting Notices and Minutes (January 23, 2002 Meeting Report) at 203-205.

¹⁸ See Plan, Section 3 – Region 8 By-laws (adopted May 1, 2002) at 7-11.

¹⁹ See Plan, Appendix A – Committee Members Contact List at 51-70.

²⁰ See Plan, Section 1.2 – Notification and Committee Participation at 2.

²¹ See Plan, Appendix V – RPC Public Meeting Notices and Minutes at 199-411; see also, Plan, Appendix B – Committee Members Meeting Attendance Roster at 51-66.

²² *Id.* at 199.

²³ See Plan, Section 3.2 – Procedure for Requesting Spectrum Allotments at 15-16 (following plan approval Region 8 will announce its first open filing window, and will hold three filings windows per year as follows: January 1 – January 31, May 1 through May 31, and September 1 through September 30).

²⁴ See Plan, Section 6 – Application Requirements at 17-18; see also, Plan, Section 7 – Application Scoring Matrix at 19-33; Plan, Section 8 – Technical Evaluation of Applications at 35-36.

²⁵ See Plan, Section 9.0 Interference Protection Criteria and System Design Specifications at 37-39.

²⁶ See Plan, Section 10 – Administration of Low-Power Interoperability Channels at 41-44.

²⁷ See Plan, Section 12 – Procedure for Frequency Coordination at 47 (applications will be sent to the applicant's preferred FCC-certified frequency advisor). Region 8 states that it will process all applications and allocate General Use spectrum using the CAPRAD system.

²⁸ See Plan, Appendix I – 700 MHz Channel Pool as Defined in CAPRAD at 117-123.

adjacent regions to Region 8: Region 19 (New England), Region 28 (Delaware, Eastern Pennsylvania and Southern New Jersey), and Region 30 (New York-Albany).²⁹

On January 16, 2009, the Bureau released a *Public Notice* seeking comment on the Region 8 Plan.³⁰ We received no comments on the plan. Based on our review of the plan, we conclude that it complies with FCC rules and policies. Accordingly, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.102(b) of the Commission's rules, 47 C.F.R. § 1.102(b), the Region 8 (New York Metropolitan Area) 700 MHz Public Safety Plan is APPROVED.

This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392.

Action by the Chief, Policy Division, Public Safety and Homeland Security Bureau.

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²⁹ See Plan Addendum dated November 4, 2008 (providing updated letters of concurrence); *see also*, Plan, Appendix O – Inter-Regional Coordination Procedures and Dispute Resolution Approval at 149-170.

³⁰ See Public Safety and Homeland Security Bureau Seeks Comments on Region 8 (New York Metropolitan Area) 700 MHz Regional Planning Committee Public Safety Plan, PS Docket No. 06-229, WT Docket No. 02-378, *Public Notice*, 24 FCC Rcd 365 (PSHSB 2008). Comments were due February 5, 2009, and reply comments were due February 17, 2009.